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IN THE CORPORATION COURT OF THE CITY OF NORFOLK, VA.

ALAN G. BURROW v. NORFOLK RAILWAY AND LIGHT COMPANY.

1. Street Railroads—Passengers—Duty to Carry to Destination.—A street railway company operating a car, with a sign thereon indicating that it will carry passengers to a certain terminus on its line, impliedly contracts with passengers boarding such car that such car will carry them to such terminus or to points on the usual route of such car between where the passenger boards such car and such terminus.

2. Same—Same—Same.—It is the duty of a street car company, when its conductor or motorman have knowledge of the fact that such car will not carry passengers to the points indicated by signs on said car, to notify passengers boarding such car, with the expectation of being carried to such terminus, or to points between where such car is taken and said terminus, of that fact, and the failure to do so is a neglect of duty on the part of the company for which it is liable in damages.

3. Same—Same—Same—Transfer of Passengers.—The rules stated above are subject to these limitations: First, that if there is a regular transfer point, where in the usual course of its business a street railway company transfers passengers from one car to another and such custom is generally known to the public, the contract mentioned in syllabus one does not apply so far as to compel the street car company to carry the passenger on the particular car boarded by him; and the company can transfer him to another car at the usual point and according to its custom without liability. Secondly, where there arises a reasonable necessity due to the exigencies naturally attendant upon the conduct of the street car business to transfer a passenger from one car to another, which necessity is not known to the conductor or the motorman of the car boarded by the passenger at the time of taking passage, then the street car company has a right to transfer said passenger from one car to another without liability to the passenger. Reasonable necessity within this last limitation must be determined upon the facts and circumstances of each particular case.

4. Same—Same—Same—Same.—When there is a reasonable necessity to transfer a passenger from one car to another, not known to the conductor or motorman of the car, but of which the proper agents of the company have knowledge, it is the duty of the company to use reasonable care to notify the conductors and motormen of their respective cars of such necessity with reasonable promptness. What constitutes such reasonable care and reasonable promptness must depend upon the facts and circumstances of each individual case.

Jas. G. Martin, for plaintiff.

W. H. Venable, for defendant.

HANCKEL, J. This is a warrant appealed from a justice of the peace court by which the plaintiff seeks to recover damages for the refusal of the defendant to carry the plaintiff to Edgewater on a Lambert's Point car under the following circumstances: On a certain Sunday morning in June, 1906, the plaintiff, desiring to take his children for an outing, boarded at the corner of Olney Road and Colonial Avenue, streets in Norfolk City, a street car of the defendant marked with the sign "Lambert's Point." The established and customary route of such cars is a continuous one from the car barn in the city of Norfolk to Lambert's Point and on through that town to Edgewater, a suburb of Norfolk City, and thence back to Norfolk City. This particular car proceeded as far as Lambert's Point on its customary route, but upon reaching the first stopping place in that town, the conductor ordered all passengers on that car to get out and transfer to another car that was standing there. This the plaintiff refused to do, saying that one of his children was lame and that the other car appeared to him to be already full and that whether it was or not he insisted on his right to be carried in that particular car on through the town of Lambert's Point to its customary terminus at Edgewater. This the conductor declined to do and the plaintiff was brought back to the point in Norfolk City where he boarded the car.

In support of his claim for damages the plaintiff proved his taking passage on the car with no notice when he did so that the car would not make its usual, regular and customary trip and also proved payment of his fare and the fact of the failure to make the usual trip as above set out.

The defendant sets up as a defense that on that morning there was a wreck or blocking of some sort of cars on its track on Church Street, over which this car had to pass, which threw a number of cars together and delayed traffic; that after passing this block and wreck on Church Street the particular car in question proceeded on its usual route as far as the corner of Main and Granby Streets in the City of Norfolk, a point on said car line some distance from where the plaintiff boarded said car and consequently reached by said car long before plaintiff boarded the same, and at such corner of Main and Granby Streets a car inspector of defendant notified the motorman of this particular car that he must not go through Lambert's Point to Edgewater but must turn around as soon as he reached Lambert's Point and return to the city and transfer passengers bound for Edgewater at Lambert's Point. This was done in order to remedy as much as possible the disarrangement of the schedule of defendant occasioned by the wreck or block on Church Street.

After the motorman had received this direction from the inspector the car proceeded on its usual route through several streets in the City of Norfolk to the corner of Olney Road and Colonial Avenue and at that point the plaintiff boarded the same as above set forth. It will thus be seen that at the time the plaintiff boarded the car the motorman knew it would not go through to Edgewater, but no notice of that fact was given or attempted to be given the plaintiff, although the sign on the car indicated it would go through. These are all the facts necessary to be considered in deciding the case. Upon this state of facts the question arises, what was the contract between the parties?

A number of cases passing upon the implied contract between a passenger and a carrier on steam railways have been cited establishing the right of the passenger to a continuous passage on the particular train boarded. But the conditions surrounding travel on street cars are so different from those attending travel on steam railways as to make it unsafe to follow such cases in attempting to ascertain the implied contract entered into between the passenger and the street car company by the act of boarding a street car with signs indicating that it would go over a certain route and paying fare therefor.

The only case which passes upon this implied contract that has been brought to the attention of the court, and apparently the only reported case on the subject, is a decision of the Canada Supreme Court, *O'Conner v. Halifax Tram. Railway Company*, 37 Can. Sup. Ct. 523; S. C. 3 Amer. & Eng. Anno. Cas. 1074. In that case the passenger took a street car standing on a track with a number of other cars waiting at a point where a regatta had been held for the purpose of taking passengers back to the city of Halifax. Some of the cars were single motor cars, while others were motor cars with trailers attached. The complaining passenger boarded a trailer on which there was no sign, but the motor car to which this trailer was attached had upon its front and rear the sign "Quinpool Road." The plaintiff desired to go to his house near which "Quinpool Road" cars passed in their usual trips. This car proceeded to the city of Halifax but when that point was reached, instead of taking the trailer on around by "Quinpool Road," the trailer was detached from the motor car and the conductor ordered the passengers to transfer to another car and the trailer was sent back to the point where the passengers had boarded it. The passenger declined to make such transfer, insisting that he had the right to transportation on that particular car to "Quinpool Road" according to the customary route of cars marked "Quinpool Road." The additional facts taken into consideration by the court were that an agent of the

company was at the point where the regatta was held, announcing before the passengers boarded this car, that these particular cars were bound for the city and the passengers should have governed themselves by that announcement, or if they did not hear it should have, *upon the peculiar circumstances of that case*, not relied on the sign alone but have made some inquiry as to their destination and also that this was an extraordinary occasion and that these were not *regular* but *extra* cars brought there to meet an exigency. The Supreme Court of Nova Scotia by a divided court decided that the plaintiff could not recover and the Supreme Court of Canada to which the case was appealed affirmed that decision also by a divided court. In the Supreme Court of Nova Scotia three opinions were filed and it appears from the opinion of Graham, J., one of the majority judges, that he did not care to commit himself to what the exact contract between parties was when a passenger boarded a street car with a certain sign and paid his fare. He says: "I will not express an opinion whether or not a passenger is entitled to be transported without stoppage or transfer in the very car which he happens to take to every point on its line, provided there is no unreasonable delay." This, it will be perceived, is the very question at issue in the case at bar. Townsend, J., who concurred with Judge Graham, only finds it necessary, in deciding the case under its peculiar facts to say: "I do not understand that in any case the company contracts to carry the passenger around in identically the same car in which he has taken his seat;" but in a previous part of his opinion he says in regard to the contract between the company and its passengers: "My view of the contract is that the company agreed to carry passengers to any destination on its line in accordance with the usual modes and methods of running its train; that is to say, it regularly, at stated intervals, runs trains around the so-called belt line on which the plaintiff's residence is situated and that any passenger taking his seat in one of these trains is entitled to be carried to his stopping place by a *continuous journey* in a reasonable time." This would seem to be rather favorable to the plaintiff's view than otherwise in the case at bar. Russell, J., in rendering a vigorous dissenting opinion in the Supreme Court of Nova Scotia, holds that the sign on the car when acted on by the passenger is a complete contract that the company will carry the passenger to any point on the route of that car in that particular car. Davies, J., renders the opinion in the Canada Supreme Court and contents himself with adopting the opinion of Graham and Townsend, judges in the Nova Scotia Court, while Idington, J., in the Supreme Court of Canada, dissents in an elaborate opinion.

A close examination of this case which, as stated above, seems

to be the only one reported passing upon a question akin to the question here, shows that there the court did not pass directly upon the question as to whether or not a passenger taking his seat in a *regular car under no peculiar circumstances* is entitled to be carried to any point on the route indicated by the sign on the car. In fact only one of the five judges who discussed the question expressed an opinion adverse to that contention. That case cannot, therefore, be regarded as adverse to the plaintiff's position here and in the annotation to it as it is reported in 3 Amer. & Eng. Anno. Cas. 1074, the annotator says of it: "In the reported case it was held, that the passenger's duty to inform himself did not end when he looked at the signs on the street car, but there were other circumstances in the case which seemingly strongly influenced the decision of the court, such as that the street railway company was handling an unusual crowd, that the passenger boarded a trailer which did not have any signs indicating that it was going in the passenger's direction, and that there was an agent of the street railway company at the starting point, who gave notice of the destination of the car. In view of the peculiar circumstances of the reported case it may be doubted whether it would be considered authority for holding that a passenger has never any right to rely exclusively on the signs of a street car in determining its destination."

In the case at bar the plaintiff boarded a *regular* Lambert's Point car, with the usual sign thereon indicating it would go through to Edgewater, took his seat and paid his fare *without notice* of any kind that the car would not make its customary trip, although the motorman at the time plaintiff boarded it knew that the car, despite its sign, would not go through to its usual destination. This, in my judgment, completed the contract between him and the company, and that that contract under such circumstances must be considered as one by which the plaintiff had the right to be carried in *that particular car* to any point on its usual route.

In order that there may be no misunderstanding, it is not contended and it is not decided that the company cannot in a reasonable exercise of a reasonable discretion in handling its complicated business, establish regular transfer points; nor is it necessary to decide that the company cannot meet an emergency, suddenly arising, by turning back its cars in order to get them on schedule when any reasonable exigency may make it necessary but timely notice of such intention must be given and surely it is not unreasonable to require the company's agents in charge of the car, *after they have been notified, or in the ordinary course of business should have been notified*, that the car will not make its regular trip in the usual way, to acquaint intending passengers of that

fact. The failure to so notify a passenger under such circumstances is of itself, in my opinion, negligence. In this case the motorman had been told, at Main Street sometime before the plaintiff boarded the car, to turn his car back when he reached Lambert's Point and yet he allowed passengers to board his car after he had obtained this knowledge without notifying them that the car would not make its regular trip. This, as above stated, was a violation of defendant's duty to such passengers, and, as the plaintiff comes within that number, he is entitled to recover.

The court has given this case a great deal of thought and has endeavored to evolve from the precedents and the principles of the law the proper rules of law that should govern the class of cases of which this is one; it has embodied the conclusions to which it has been led in the syllabi which it has prepared for its opinion.

(Here the Judge read the syllabi.)

These rules seem to the court reasonable and sustained by legal principles.

As to the damages to which the plaintiff is entitled, the suit was evidently brought to determine a right and the plaintiff is not entitled to more than nominal damage. A judgment will, therefore, be entered for the plaintiff for one dollar (\$1) and costs and the court will enter of record under § 3543 of the Code, that the object of this action was to try a right in order that such cost may be recovered.

Note.

This case involves a new question and there are no precedents or any case like it in any respect save as pointed out in the opinion.